

ATTACHMENT 9

Letter from Assistant Attorney General
Todd Kim and U.S. Attorney Jaime
Esparza to Governor Greg Abbott
(July 20, 2023)



U.S. Department of Justice

Environment and Natural Resources Division

***Assistant Attorney General
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July 20, 2023

The Honorable Greg Abbott
Governor of Texas
Office of the Governor
State Insurance Building
1100 San Jacinto
Austin, TX 78701

The Honorable Angela Colmenero
Interim Attorney General of Texas
Office of the Attorney General
300 West 15th Street
Austin, TX 78701

Re: Notice of Prospective Filing of Legal Action Regarding Unlawful Activities in
Rio Grande River

Dear Governor Abbott and Attorney General Colmenero:


We write to inform you pursuant to the Justice Manual, J.M. § 1-10.100, that the United States intends to file legal action in relation to the State of Texas's unlawful construction of a floating barrier in the Rio Grande River. The State of Texas's actions violate federal law, raise humanitarian concerns, present serious risks to public safety and the environment, and may interfere with the federal government's ability to carry out its official duties.

On or before July 12, 2023, and continuing to the present, Texas and its agents placed a floating barrier in the Rio Grande River near the Camino Real International Bridge, Eagle Pass, Texas. The floating barrier violates section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, which prohibits the creation of any obstruction to the navigable capacity of waters of the United States, and further prohibits building any structure in such waters without authorization from the United States Army Corps of Engineers ("Corps"). Accordingly, a Department of the Army permit is required for the installation of structures or work in or affecting navigable waters of the United States. *See id.*; 33 C.F.R. § 322.3(a). The floating barrier at issue here is a structure that obstructs the navigable capacity of the Rio Grande River, which is a navigable water of the United States within the meaning of the Rivers and Harbors Act. Texas does not have authorization from the Corps to install the floating barrier and did not seek such authorization before doing so.

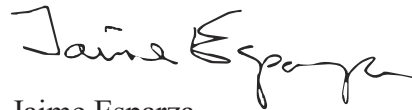
Texas's unauthorized construction of the floating barrier is a *prima facie* violation of the Rivers and Harbors Act. This floating barrier poses a risk to navigation, as well as public safety, in the Rio Grande River, and it presents humanitarian concerns. Thus, we intend to seek appropriate legal remedies, which may include seeking injunctive relief requiring the removal of obstructions or other structures in the Rio Grande River.

As provided by the Justice Manual, we welcome the opportunity to have a discussion between our leadership and Texas's leadership concerning this prospective litigation. If Texas is interested in having such a discussion, please contact Matthew Littleton at 202-514-4760 or matthew.littleton@usdoj.gov. If we do not receive a response by 2:00 P.M. Eastern Time on July 24, 2023, indicating your commitment to expeditiously remove the floating barrier and related structures, the United States intends to file legal action.

Sincerely,



Todd Kim
Assistant Attorney General



Jaime Esparza
United States Attorney
Western District of Texas

Cc (by email):

Brent Webster, First Assistant Attorney General, State of Texas
Gardner Pate, Chief of Staff, Office of Texas Governor
Michael Connor, Assistant Secretary of the U.S. Department of the Army (Civil Works)
Lt. Gen. Scott A. Spellmon, Chief of Engineers, U.S. Army Corps of Engineers
Craig R. Schmauder, Deputy General Counsel (IECW), U.S. Department of the Army
David R. Cooper, Chief Counsel, U.S. Army Corps of Engineers